



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 1, 2010

The Honorable Patrick J. Leahy
United States Senate
Washington, D.C. 20510

Dear Senator Leahy:

Thank you for your letter to the Attorney General dated October 15, 2009, requesting input from the Department of Justice ("the Department") on what steps may be taken to respond to the decision of the Supreme Court in *Medellin v. Texas*, 552 U.S. 491 (2008), and of the International Court of Justice in the *Case Concerning Avena and Other Mexican Nationals (Mex. v. U.S.)*, 2004 I.C.J. 12 (Mar. 31), regarding the obligation to provide consular notification for non-citizens arrested by law enforcement agencies in the United States. An identical letter is being sent to all signatories to your letter.

The Department, and the Administration as a whole, take very seriously the international legal obligations of the United States. The Department is especially concerned with respect to the Vienna Convention on Consular Relations ("VCCR"), which, as you note in your letter, provides that a non-citizen who has been arrested or detained must be advised that he is entitled to have a consular official from his home country notified of the arrest or detention, as we want to ensure the same protection for United States citizens abroad.

Within the Department, we strive to ensure that our law enforcement officers and prosecutors comply with their obligations under the VCCR. We provide comprehensive guidance and training to all Department prosecutors and law enforcement agents regarding those obligations. They receive materials on the consular notification and access process prepared by the Department of State, which contain notices to foreign nationals translated into foreign languages. Prosecutors and agents also have electronic access to up-to-date listings and contact information for all foreign embassies and consular offices in the United States.

In addition, the Department has submitted to the Advisory Committee on the Criminal Rules a proposed amendment to Rule 5 of the Federal Rules of Criminal Procedure (as well as the corresponding Rule 58) which would require Federal courts to inform a defendant in Federal custody, at the initial court appearance, that if he or she is not a citizen of the United States, an attorney for the Government or Federal law enforcement officer will, upon request, notify a consular officer from his country of nationality of his arrest. Such an amendment could supplement efforts currently undertaken by Federal law enforcement agents and prosecutors to ensure that foreign defendants arrested pursuant to United States charges receive the notifications

to which they are entitled pursuant to the obligations of the United States under the multilateral VCCR, or other bilateral agreements. *See* 28 C.F.R. 50.5.

With regard to compliance by State and local law enforcement authorities, the Department for many years has included training on VCCR obligations in all of our outreach to our non-Federal partners at regularly scheduled conferences and trainings on general international issues, such as extradition and collection of evidence abroad. We are now examining new ways to communicate the importance of complying with the VCCR. For example, former Deputy Attorney General David W. Ogden spoke to the National Association of Attorneys General ("NAAG") last fall and raised, among other issues, the importance of compliance by State and local law enforcement with our consular notification obligations. And, in addition to the efforts of the Department of Justice, the Department of State provides extensive guidance and training to State and local officials regarding United States obligations under the VCCR.

In the aftermath of the *Medellin* decision, the Department has continued to consider other means to ensure United States compliance with the *Avena* judgment including legislation. The Administration believes legislation would be an optimal way to give domestic legal effect to the *Avena* judgment, and we would welcome the opportunity to discuss various approaches with you.

The Department appreciates your interest in these important issues, and we look forward to working with you to ensure that the United States lives up to its international obligations. Please do not hesitate to contact the Department if we can be of further assistance with regard to this or any other matter. The Office of Management and Budget has advised us that there is no objection to submission of this letter from the perspective of the Administration's program.

Sincerely,

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Ronald Weich
Assistant Attorney General

IDENTICAL LETTERS SENT TO THE HONORABLE JOHN F. KERRY; THE HONORABLE
RUSSELL D. FEINGOLD; THE HONORABLE BENJAMIN L. CARDIN; AND THE
HONORABLE AL FRANKEN



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 1, 2010

The Honorable John F. Kerry
United States Senate
Washington, D.C. 20510

Dear Senator Kerry:

Thank you for your letter to the Attorney General dated October 15, 2009, requesting input from the Department of Justice ("the Department") on what steps may be taken to respond to the decision of the Supreme Court in *Medellin v. Texas*, 552 U.S. 491 (2008), and of the International Court of Justice in the *Case Concerning Avena and Other Mexican Nationals (Mex. v. U.S.)*, 2004 I.C.J. 12 (Mar. 31), regarding the obligation to provide consular notification for non-citizens arrested by law enforcement agencies in the United States. An identical letter is being sent to all signatories to your letter.

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U.S. Department of Justice

Office of Legislative Affairs

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Washington, D.C. 20530

April 1, 2010

The Honorable Russell D. Feingold
United States Senate
Washington, D.C. 20510

Dear Senator Feingold:

Thank you for your letter to the Attorney General dated October 15, 2009, requesting input from the Department of Justice ("the Department") on what steps may be taken to respond to the decision of the Supreme Court in *Medellin v. Texas*, 552 U.S. 491 (2008), and of the International Court of Justice in the *Case Concerning Avena and Other Mexican Nationals (Mex. v. U.S.)*, 2004 I.C.J. 12 (Mar. 31), regarding the obligation to provide consular notification for non-citizens arrested by law enforcement agencies in the United States. An identical letter is being sent to all signatories to your letter.

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The Honorable Benjamin L. Cardin
United States Senate
Washington, D.C. 20510

Dear Senator Cardin:

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The Honorable Al Franken
United States Senate
Washington, D.C. 20510

Dear Senator Franken:

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